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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Dusty Michelle Woolley,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
Administration,

13 Defendant.
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No. CV-22-00546-PHX-DJH

ORDER

15 Plaintiff Dusty Michelle Woolley (“Plaintiff”) has filed a motion for attorney fees
16 under Section 406(b) of the Social Security Act. 42 U.S.C. § 406(b). In Plaintiff’s first
17 Motion for an Award of Attorney Fees (Doc. 24), Plaintiff, through counsel, seeks an
18 award of \$8,626.91 in total attorney fees. The Commissioner states that Plaintiff’s
19 counsel is the real party-in-interest, but that he neither supports nor opposes counsel’s
20 request for attorney fees. (Doc. 26 at 2). The Court will grant Plaintiff’s counsel her
21 requested fees.

22 Section 406¹ establishes “the exclusive regime for obtaining fees for successful
23 representation of Social Security benefits claimants.” *Gisbrecht v. Barnhart*, 535 U.S.
24 789, 795–96 (2002). “The statute deals with the administrative and judicial review stages
25 discretely: [Section] 406(a) governs fees for representation in administrative proceedings;
26 [Section] 406(b) controls fees for representation in court.” *Id.* at 794. Section 406(b)
27 provides that “[w]hen a court renders a judgment favorable to a claimant . . . who
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¹ Unless where otherwise noted, all Section references are to the Social Security Act.

1 was represented before the court by an attorney, the court may determine and allow as
 2 part of its judgment a reasonable fee for such representation, not in excess of 25 percent
 3 of the total of the past-due benefits to which the claimant is entitled by reason of such
 4 judgment.” 42 U.S.C. § 406(b)(1)(A). Fees are payable out of, and not in addition to, the
 5 amount of a claimant’s past-due benefits. *Id.*

6 Before awarding fees, the Court must consider whether the 42 U.S.C. § 406(b) fee
 7 requested is (1) within the statutory guidelines; (2) consistent with the fee agreement; and
 8 (3) reasonable in light of the contingent-fee agreement. *See Gisbrecht*, 535 U.S. at 807–
 9 08. Additionally, courts will require plaintiff’s counsel to refund to the plaintiff the lesser
 10 of the fees awarded under Section 406(b) and the Equal Access to Justice Act 28 U.S.C. §
 11 2412 (“EAJA”). *See Parrish v. Astrue*, 2008 WL 961611, at *2 n.3 (D. Ariz. Apr. 8,
 12 2008) (“When EAJA fees are paid and there is also an award of attorney fees under
 13 406(b), a plaintiff’s attorney must refund to the claimant the amount of the smaller fee.
 14 There is thus a dollar-for-dollar offset of any 406(b) fee by an EAJA award.”) (internal
 15 quotation and citation omitted); *Parrish v. Comm’r of Soc. Sec. Admin.*, 698 F.3d 1215
 16 (9th Cir. 2012) (“Where the same attorney represented a claimant at each stage of judicial
 17 review, the court need merely offset all EAJA awards against the § 406(b) award.”).

18 Plaintiff’s Counsel seeks a total fee award of \$8,626.91 for 25% of Plaintiff’s past-
 19 due benefits—which the parties agreed to as a contingency fee. (Doc. 25 at 5). Plaintiff
 20 sought judicial review for the denial of her Supplemental Security Income benefits (Doc.
 21 1) and the Court reversed the decision of the Administrative Law Judge (“ALJ”) and
 22 remanded this matter to the Commissioner for further proceedings. (*Id.* at 2). On
 23 remand, Plaintiff was awarded benefits and paid \$34,507.64 in total back-pay benefits,
 24 paid out over the course of three installments, six months apart. (Doc. 25-1 at 5).
 25 Plaintiff’s counsel was also previously awarded \$6,850.00 in fees under the EAJA. (Doc.
 26 23). Having reviewed Plaintiff’s Motion and Memorandum in support of the Motion
 27 (Docs. 24 & 25), the Court finds that the time expended, and amounts charged by
 28 counsel, are reasonable for this case.

1 First, Plaintiff's request for fees does not exceed twenty-five percent of the total
 2 past-due benefits obtained by Plaintiff. (Doc. 25-2 at 2). Plaintiff was awarded
 3 retroactive benefits in the amount of \$34,507.64, but twenty-five percent of that benefit
 4 award was withheld for attorney fees. (*Id.*) The amount that Plaintiff pursues for
 5 attorney fees—\$8,626.91—is exactly 25%² as statutorily required. *See Gisbrecht*, 535
 6 U.S. at 807–08.

7 Second, the fee arrangement between Plaintiff and her counsel stated that
 8 Plaintiff's counsel would receive twenty-five percent of the past-due benefits awarded to
 9 Plaintiff because of counsel's representation. (Doc. 25-3 at 2). This means that
 10 Plaintiff's request is consistent with the fee arrangement between Plaintiff and counsel
 11 and that it mirrors the requirements of Section 406(b). *See* 42 U.S.C. § 406(b)(1)(A).

12 Finally, Plaintiff's total fee request is reasonable considering the contingent fee
 13 agreement. Plaintiff's counsel submitted an itemization of services that represents that
 14 she spent a total of 29.4 hours laboring on this matter. (Doc. 25-4 at 1–3). The attached
 15 Itemization of Services illustrates that Plaintiff's counsel has been representing Plaintiff
 16 since March 31, 2022. (*Id.* at 2). Her work has included reviewing the unfavorable
 17 decision of the ALJ, reviewing Orders set out by the Court, as well as reviewing medical
 18 opinions and transcript testimony. (*Id.*) Other work performed by counsel accords with
 19 the work normally performed by attorneys on these cases like drafting legal arguments on
 20 why the ALJ's decision was improper, countering the responding brief, and researching
 21 and crafting arguments in Plaintiff's favor. (*Id.* at 3).

22 If Plaintiff's counsel was paid hourly for the work she did in this matter, she
 23 would receive a fee equivalent to \$293.43 per hour for the 29.4 hours of related work she
 24 performed.³ Having considered the reasonableness factors set forth in *Giesbrecht*, the
 25 Court concludes that this amount is a reasonable rate. 535 U.S. at 808; *see also Parrish*
 26 *v. Astrue*, 2008 WL 961611, at *4 (D. Ariz. Apr. 8, 2008) (“This Court finds counsel's

27 ² Twenty-five percent of \$34,507.64 is \$8,626.91 (0.25 x 34,507.64).

28 ³ Dividing the request amount of attorney fees, \$8,626.91, by 29.4 (the amount of work hours committed to representing Plaintiff) yields a total hourly rate of \$293.43.

1 requested attorney's fees in the total amount of \$37,254.30 for 34.5 hours of work, which
2 calculates to an overall effective rate of \$1079.83 per hour, are reasonable in light of the
3 legal standards set forth in *Gisbrecht* and the facts of this case."). The Court will
4 therefore award \$8,626.91 in attorney fees under Section 406(b), but Plaintiff's counsel
5 must refund Plaintiff the \$6,850.00 EAJA award received. (Doc. 23). *See Russell v.*
6 *Sullivan*, 930 F.2d 1443, 1446 (9th Cir. 1991) ("The dual fee awards [under 42 U.S.C. §
7 406(b) and the EAJA] are proper here as long as [the plaintiff's] attorney gives the
8 smaller of the two awards to his client to compensate [him] for his litigation costs.").


9 Accordingly,

10 **IT IS ORDERED** that Plaintiff's Motion for an Award of Attorney Fees
11 (Doc. 24) is **granted**. Plaintiff is awarded \$8,626.91 in attorney fees under 42 U.S.C.
12 § 406(b).

13 **IT IS FURTHER ORDERED** that Plaintiff's counsel shall refund to Plaintiff the
14 lesser of the fees awarded under 42 U.S.C. § 406(b) and the Equal Access to Justice Act.

15 **IT IS FINALLY ORDERED** that the fees shall be made payable to Plaintiff's
16 attorney, Sarah Fern, and can be made by electronic fund transfer (EFT) or by check
17 mailed to the following address: Larkin & Fern, PLLC, 301 E. Bethany Home Road, Ste.
18 C186, Phoenix, AZ 85012.

19 Dated this 5th day of November, 2025.

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23 Honorable Diane J. Humetewa
24 United States District Judge
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